

The Burger Court Opinion Writing Database

California v. Sierra Club

451 U.S. 287 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 1, 1981

Re: (79-1252 - State of California v. Sierra Club
(
(79-1502 - Kern County Water Agency v. Sierra Club)

Dear Bill:

I join.

Regards,

WRB

Justice Rehnquist

Copies to the Conference

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 7, 1981

RE: No. 79-1252 - California, et al. v. Sierra
Club, et al.
No. 79-1502 - Kern County Water Agency, et al.
v. Sierra Club, et al.

Dear Bill:

The procedure you suggest in your memorandum of
April 6 is entirely satisfactory and I take it you will
proceed along those lines.

Regards,

WEB

By
telephone

Justice Rehnquist

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE CLERK OF THE SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

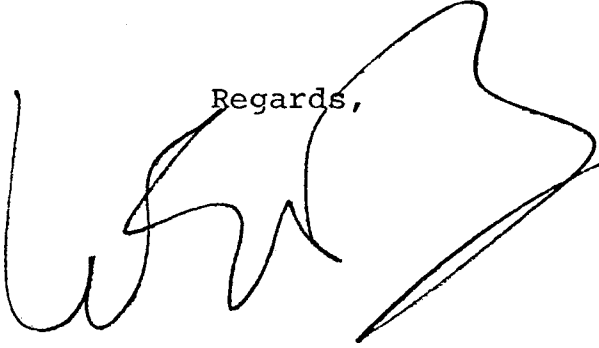
April 17, 1981

Re: Nos. 79-1252 and 79-1502 - State of
California et al. v. Sierra Club

Dear Bill,

Please add my name to your concurring
opinion.

Regards,



Justice Rehnquist

Copies to the Conference

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1981

RE: Nos. 79-1252 & 1502 California v. Sierra Club

Dear Thurgood and John:

We three were in dissent in the above. I'll be happy
to try my hand at the dissent.

Sincerely,

Bren

Mr. Justice Marshall

Mr. Justice Stevens

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MANUSCRIPT DIVISION

U.S. SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 5, 1981

RE: Nos. 79-1252 & 79-1502 - California and Kern County
v. Sierra Club

Dear Bill:

I am sorry that I haven't gotten this word to you sooner. I intend to circulate a dissent in the above, but it may be a while before I can finish it.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 17, 1981

RE: Nos. 79-1252 and 1502 California & Kern Co.
Water Agency v. Sierra Club, et al.

Dear Byron:

I voted at conference to reverse but your opinion
concurring in the judgment is compellingly persuasive.
Please join me.

Sincerely,



Justice White

cc: The Conference

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OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT CONFERENCE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 9, 1981

RE: Nos. 79-1252 and 1502 California & Kern County Water
Agency, et al. v. Sierra Club, et al.

Dear Byron:

I agree.

Sincerely,

Bill

Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

OFFICE OF THE CLERK

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 23, 1981

Re: No. 79-1252 and 79-1502
California v. Sierra Club

Dear Bill,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.
/

Justice Rehnquist

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MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 13, 1981

Re: No. 79-1252 and 79-1502,
California v. Sierra Club

Dear Bill,

Please add my name to your opinion concurring
in the judgment.

Sincerely yours,

P.S.
✓

Justice Rehnquist

Copies to the Conference

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MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 26, 1981

Re: 79-1252 and 79-1502:
Calif. v. Sierra Club and Kern
Cnty. Water Agy. v. Sierra Club

Dear Bill,

It is likely that I shall concur
separately in this case.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

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MANUSCRIPT DIVISION

U.S. SUPREME COURT

✓
10. AND
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 16 MAR 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE WHITE, concurring in the judgment.

The California Water Project consists of a series of water storage and transportation facilities designed primarily to transport water from the relatively moist climate of Northern California to the more arid southern half of the State. Respondents, an environmental organization and two private citizens, seek to enjoin the construction and operation of water diversion facilities which are part of the project. They rely upon § 10 of the Rivers and Harbors Act of 1899, which prohibits "[t]he creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States. . . ."¹ Since the

¹ Section 10 of the Rivers and Harbors Act of 1899 provides:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary

Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 1

2nd DRAFT

From: Mr. Justice White

Circulated

Recirculated: 18 MAR 1981

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, con-
curring in the judgment.

The California Water Project consists of a series of water storage and transportation facilities designed primarily to transport water from the relatively moist climate of Northern California to the more arid southern half of the State. Respondents, an environmental organization and two private citizens, seek to enjoin the construction and operation of water diversion facilities which are part of the project. They rely upon § 10 of the Rivers and Harbors Act of 1899, which prohibits "[t]he creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States. . . ."¹ Since the

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"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 19, 1981

Re: 79-1252 - California v. Sierra Club
79-1502 - Kern County Water Agency
v. Sierra Club

Dear Bill,

I have sent to the printer the attached Part
IV to my concurrence in the above case.

Sincerely yours,



Mr. Justice Rehnquist
Copies to the Conference

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U.S. DEPARTMENT OF JUSTICE
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pp 13-17 & stylistic

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, con-
curring in the judgment.

The California Water Project consists of a series of water storage and transportation facilities designed primarily to transport water from the relatively moist climate of Northern California to the more arid southern half of the State. Respondents, an environmental organization and two private citizens, seek to enjoin the construction and operation of water diversion facilities which are part of the project. They rely upon § 10 of the Rivers and Harbors Act of 1899, which prohibits "[t]he creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States. . . ." ¹ Since the

¹ Section 10 of the Rivers and Harbors Act of 1899 provides:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 8 APR 1981

15c
4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

Under review here is a decision of the Court of Appeals for the Ninth Circuit holding that private parties may sue under the Rivers and Harbors Act of 1899 to enforce § 10 of that Act. Respondents, an environmental organization and two private citizens,¹ seek to enjoin the construction and operation of water diversion facilities which are part of the California Water Project (CWP). They rely upon § 10 of the Act, which prohibits "[t]he creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States. . . ."²

¹ The Sierra Club is a nonprofit California corporation; Hank Schramm is a commercial fisherman active in the San Francisco Bay and Pacific Ocean; and William Dixon is a Sacramento-San Joaquin Delta land owner. See 400 F. Supp. 610, 619 (ND Cal. 1975).

² Section 10 of the Rivers and Harbors Act of 1899 provides:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 29, 1981

MEMORANDUM TO THE CONFERENCE

Case held for No. 79-1252 - California v. Sierra Club,
and No. 79-1502 - Kern County Water Agency v. Sierra Club

No. 79-1625 - Sierra Club v. Andrus

This case arose out of the same Court of Appeals decision as did California v. Sierra Club and Kern County Water Agency v. Sierra Club. In this petition the Sierra Club argues that the court below erroneously concluded that the United States had authorized the construction and operation of a water pumping facility located on the Sacramento-San Joaquin Delta. In short, having concluded that private parties such as the Sierra Club have a right to sue under §10 of the Rivers and Harbors Appropriations Act of 1899, the Court of Appeals went on to decide the merits of the various claims. The Sierra Club contests the decision as to one of those claims. In California v. Sierra Club, however, we declined to address the merits of substantive claims presented by the parties since we had reached a contrary conclusion on the availability of a private right of action. Hence, our disposition of the petitions brought by the State of California and by the Kern County Water Agency make it clear that the lower court should not have addressed the merits of the substantive claims before it. Although the availability of an implied cause of action is not explicitly raised in this petition, I would grant, vacate and remand on California v. Sierra Club since in reaching the merits the Court of Appeals has clearly adopted a position inconsistent with that case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 2, 1981

Re: Nos. 79-1252 and 1502 - California and Kern
County v. Sierra Club

Dear Byron:

Please join me.

Sincerely,

TM.

T.M.

Justice White

cc: The Conference

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MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 21, 1981

Re: Nos. 79-1252 and 1502 - California and
Kern County v. Sierra Club

Dear Byron:

Please join me in your circulation of
April 8, 1981.

Sincerely,

JM.

T.M.

Justice White

cc: The Conference

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OFFICE OF THE CLERK OF THE SUPREME COURT OF THE UNITED STATES

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 26, 1981

Re: No. 79-1252 - California v. Sierra Club
No. 79-1502 - Kern County Water Agency v. Sierra Club

Dear Bill:

I understand that Byron proposes a separate concurrence. For now, I would like to wait to see what he says. I shall certainly concur at least in the judgment.

I should say that I am somewhat concerned about the material on pages 5-6 of your opinion because I think that material may not be entirely consistent with the analysis followed in Coutu. Another reason for my present hesitancy is my forthcoming dissent in Milwaukee v. Illinois. I would like to be at rest on that before I take a position here.

I may be presumptuous in making this suggestion, but would it be better to remand the case "with directions to dismiss" rather than for further proceedings?

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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OFFICE OF THE CLERK

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1981

Re: No. 79-1252 - California v. Sierra Club
No. 79-1502 - Kern County Water Agency v. Sierra Club

Dear Byron:

Please join me.

Sincerely,

HAB

Mr. Justice White

cc: The Conference

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U.S. SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

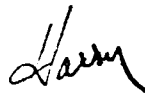
April 9, 1981

Re: No. 79-1252 - California v. Sierra Club
No. 79-1502 - Kern County Water Agency v. Sierra Club

Dear Byron:

Please join me in your circulation of 8 April.

Sincerely,



Mr. Justice White

cc: The Conference

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U.S. SUPREME COURT RECORDS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 23, 1981

79-1252 and 79-1503 California v. Sierra Club

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTION

MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 10, 1981

79-1252 and 79-1502 California v. Sierra Club

Dear Bill:

Please join me in your opinion concurring in the
judgment in the above case.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: FEB 20 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

These consolidated cases present the question whether the Rivers and Harbors Act of 1899 contains an implied cause of action enabling private parties to enforce the provisions of § 10 of the Act. Petitioners also urge us to decide if permits are required under the Act for the state water allocation projects involved in these cases.

I

Precipitation is relatively abundant in the mountainous areas of Northern California, but most of the population and irrigable land are located in the more arid southern half of the State. The California Water Project (CWP) is designed to alleviate this problem by gathering water in the north and transporting it for ultimate use in the south. Facilities of the CWP store runoff behind dams in the Sacramento River watershed in Northern California. As needed the water is released and flows into the Sacramento-San Joaquin Delta, a low-lying maze of islands and interlocking channels lying

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OFFICE OF THE CLERK OF THE SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 17, 1981

Re: No. 79-1252 California v. Sierra Club

Dear Byron:

In due course I shall circulate a revised draft in response to your concurring opinion.

Sincerely,

W. H. Rehnquist

Justice White

Copies to the Conference

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OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 18, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-1252 California v. Sierra Club

Enclosed are two footnotes which I propose to add to the draft opinion in this case. The first will be added after the cite to Touche Ross on page 4, the second after the full paragraph on page 5. A revised printed draft will be circulated when available from the printer.

Sincerely,



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MANUSCRIPT DIVISION

U.S. SUPREME COURT

pp 4-8

To:

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

2nd DRAFT Recirculated: MAR 20 1981

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

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U.S. SUPREME COURT RECORDS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 6, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-1252 California, et al. v. Sierra Club, et al.
No. 79-1502 Kern County Water Agency, et al. v.
Sierra Club, et al.

With the changes in votes since the Conference, it appears to me that Byron's opinion now has five votes and mine only four. Although Byron has told me he cannot remember a case in which all nine came out for reversal, but the split was five to four, it seems to me that with our customary practice the Court opinion should be that of Byron, and mine should be the concurring opinion. Assuming that I have the permission of the Chief Justice, I shall proceed to negotiate the necessary changes in form, style, etc., with Byron.

Sincerely,



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TO: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

Mr. Justice Rehnquist

Circulated: APR 10 1981

Recirculated: _____

State of California et al.,
Petitioners,
79-1252 v.
Sierra Club et al.
Kern County Water Agency
et al., Petitioners,
79-1502 v.
Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE REHNQUIST, concurring in the judgment.

I agree completely with the conclusion of the Court that in this case "Congress was not concerned with the rights of individuals. It is not surprising, therefore, that there is no indication of legislative intent, explicit or implicit, either to create . . . a [private] remedy or to deny one." *Ante*, at 7.

I also agree with the Court's analysis, *ante*, at 9, where it says:

"As recently emphasized, the focus of the inquiry is on whether Congress intended to create a remedy. *Universities Research Association v.outu*, — U. S. —, — (1981), Slip Op., at 15. *Transamerica Mortgage Advisors v. Lewis*, *supra*, at 23-24; *Touche Ross & Redington*, *supra*, at 575-576. The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide."

My only difference, and the difference which leads me to write this separate concurrence in the judgment, is that I think the Court's opinion places somewhat more emphasis on *Cort v. Ash*, 422 U. S. 66 (1975) than is warranted in light

55562000 50 ADV 11 1

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Mr. Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

John Marshall Harlan II

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

APR 13 1981

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,
79-1252 v.
Sierra Club et al.
Kern County Water Agency
et.al., Petitioners,
79-1502 v.
Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE REHNQUIST, with whom JUSTICE STEWART and JUSTICE POWELL join, concurring in the judgment.

I agree completely with the conclusion of the Court that in this case "Congress was not concerned with the rights of individuals. It is not surprising, therefore, that there is no 'indication of legislative intent, explicit or implicit, either to create . . . a [private] remedy or to deny one.'" *Ante*, at 7.

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NOV 11 1981

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: APR 22 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1252 AND 79-1502

State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, JUSTICE STEWART, and JUSTICE POWELL join, concurring in the judgment.

I agree completely with the conclusion of the Court that in this case "Congress was not concerned with the rights of individuals. It is not surprising, therefore, that there is no indication of legislative intent, explicit or implicit, either to create . . . a [private] remedy or to deny one." *Ante*, at 7.

I also agree with the Court's analysis, *ante*, at 9, where it says:

"As recently emphasized, the focus of the inquiry is on whether Congress intended to create a remedy. *Universities Research Association v.outu*, — U. S. —, — (1981), Slip Op., at 15. *Transamerica Mortgage Advisors v. Lewis*, *supra*, at 23-24; *Touche Ross & Co. v. Redington*, *supra*, at 575-576. The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide."

My only difference, and the difference which leads me to write this separate concurrence in the judgment, is that I think the Court's opinion places somewhat more emphasis

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OFFICE OF THE CLERK OF THE SUPREME COURT

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 5, 1981

Re: 79-1252 and 79-1502 - California and Kern
County v. Sierra Club

Dear Bill:

Since I went the other way at Conference, I
shall wait for the dissent.

Respectfully,

/ch

Justice Rehnquist

Copies to the Conference

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U.S. SUPREME COURT RECORDS

10. The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: APR 2 '81

1st DRAFT

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State of California et al.,
Petitioners,

79-1252 v.

Sierra Club et al.

Kern County Water Agency
et al., Petitioners,

79-1502 v.

Sierra Club et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE STEVENS, concurring in the judgment.

In 1888 this Court reversed a decree enjoining the construction of a bridge over a navigable river. *Willamette Iron Bridge Co. v. Hatch*, 125 U. S. 1. The Court's opinion in that case did not question the right of the private parties to seek relief in a federal court; rather, the Court held that no federal rule of law prohibited the obstruction of the navigable waterway.* Congress responded to the *Willamette* case in the

*The *Willamette* Court explained the issue presented as follows:

"The gravamen of the bill was, the obstruction of the navigation of the Willamette River by the defendants, by the erection of the bridge which they were engaged in building. The defendants pleaded the authority of the state legislature for the erection of the bridge. The court held that the work was not done in conformity with the requirements of the state law; but whether it were or not, it lacked the assent of Congress, which assent the court held was necessary in view of that provision in the act of Congress admitting Oregon as a State, which has been referred to. The court held that this provision of the act was tantamount to a declaration that the navigation of the Willamette River should not be obstructed or interfered with; and that any such obstruction or interference, without the consent of Congress, whether by state sanction or not, was a violation of the act of Congress; and that the obstruction com-

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U. S. DEPARTMENT OF COMMERCE

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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For: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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